

(2014) 05 DEL CK 0282

Delhi High Court

Case No: Crl. M.C. No. 1769/2014

Ravi Kiran

APPELLANT

Vs

State (GNCT of Delhi)

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 32
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 170, 173, 173(8), 200
- Penal Code, 1860 (IPC) - Section 120B, 34, 376, 376B, 376C

Hon'ble Judges: V.P. Vaish, J

Bench: Single Bench

Advocate: D.S. Kohli, Advocate for the Appellant; Yogesh Verma, APP, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

V.P. Vaish, J.

By this petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") the petitioner seeks quashing of final report dated 15.2.2012 submitted by the investigating agency in case FIR No.20/2012 u/s 420/120B IPC registered at P.S. Baramkhamba Road, New Delhi.

2. In nutshell the facts of the case are that the petitioner lodged a complaint u/s 200 of Cr.P.C. seeking directions to the police for registration of FIR. The Metropolitan Magistrate directed the SHO, P.S. Barakhamba Road to file Action Taken Report. On 15.2.2012 FIR u/s 420 read with Section 120B IPC was registered. The case of the petitioner/complainant is that the prospective accused No.2, Mr. K.N. Shukla is one of the directors of accused No.1 company, namely Vishnurupa Developers Pvt. Ltd. and is responsible for day to day affairs and business of the said company. Prospective accused No.3 Mr. Vishesh Rastogi is the Manager and authorised signatory of the said company. Mr. Vijay Taneja, Sachin Bidhuri, Vinod Chopra,

Sharad Taneja, Ramesh Arora and Rajiv Arora are well known to the complainant as they are doing the business of real estate. They approached the petitioner and told him that they are having very good relations with Mr. K.N. Shukla and Vishesh Rastogi of M/s. Vishnurupa Developers Pvt. Ltd., who owns a very prime piece of land of more than 200 acres at G.T. Road, Amritsar, Punjab.

3. The complainant initially refused any dealing with them. Mr. Vijay Taneja and the director of M/s. SVS Infra Build Pvt. Ltd. proposed to become partner with the complainant in purchasing the land. On persuasion, the petitioner/complainant along with Mr. Harish Kumar came to Delhi. The prospective accused persons namely Vijay Taneja, Mr. Sachin Bidhuri, Mr. Vinod Chopra and Mr. Sharad Taneja took them to the office of M/s. Vishnurupa Developers Pvt. Ltd. at Barakhamba Road, New Delhi. The complainant was sent outside for taking lunch. When the complainant along with Mr. Harish Kumar came back, accused persons namely Vijay, Sharad, Sachin and Vinod took Mr. K.N. Shukla and Mr. Vishesh Rastogi in a separate room where they had some personal meeting. The accused persons told the complainant and Harish Kumar that they have finalised the deal and decided to purchase 160 acres of land at the rate of Rs.1.20 crores per acre. The complainant objected by saying that they should have been consulted before finalisation of the deal. Vijay Taneja, Sachin Bidhuri, Sharad Taneja and Vinod Chopra told the complainant that they were partners in purchase of the said land and the complainant has to believe them. On their representation Mr. Harish Kumar, partner of the complainant paid Rs.25 lakhs through cheque No.065835 dated 16.6.2011 drawn on Central Bank of India in favour of M/s. Vishnurupa Developers Pvt. Ltd. and Rs.20.00 lakhs in cash. Similarly the complainant also paid Rs.25.00 lakhs by way of cheque No.057822 dated 16.6.2011 drawn on Union Bank of India in favour of M/s. Vishnurupa Developers Pvt. Ltd. and Rs.20.00 lakhs in cash. All the prospective accused persons directed the complainant to pay Rs.2.00 crores within two days in addition to Rs.1 crore which was to be paid by Mr.Vijay Taneja as his share.

4. Mr. Vijay, Sharad, Sachin and Vinod in furtherance of their conspiracy, in presence of the complainant issued cheque No.019801 dated 17.6.2011 amounting to Rs. 1 crore (Rupees one crore) and told the complainant that this cheque was in lieu of the said cheque and has been issued in lieu of one-third share of the total amount of Rs.3.00 crores (Rupees three crores). The complainant paid amount on different dates as per receipts issued by Mr.Vishesh Rustogi, authorised signatory of M/s. Vishnurupa Developers Pvt. Ltd. The cheque bearing No.057822 dated 16.6.2011 for Rs.25.00 lakhs issued by complainant was not encashed on account of difference in signatures and in lieu thereof the complainant/petitioner transferred the said amount by way of RTGS in favour of M/s. Vishnurupa Developers Pvt. Ltd. Later on, the complainant came to know that the cheque for Rs.1.00 crore which was issued by SVS Infra Build Pvt. Ltd. was never produced for encashment by accused No.1 company. The complainant also alleged that all the accused persons assured the complainant that after receipt of the total amount of Rs.3.00 crores (Rupees three

crores), they will execute an agreement to sell and GPA in favour of the complainant and thereafter, further amount shall be paid after 30 days of the signing of the agreement. After 24.6.2011 the complainant asked the proposed accused Vijay, Vinod, Sachin, Sharad to get the agreement executed in his favour and they assured that the agreement would be executed very soon. In the first week of November, 2011 the complainant came to know through Mr. Ramesh Arora, Gurjit Aujla and Rajeev Kumar, who are partners/directors of M/s. New Hope Developers that they have already executed an agreement to sell dated 28.6.2011 with M/s. Vishnurupa Developers Pvt. Ltd. in favour of their company M/s. New Hope Developers. The directors warned the complainant that they have agreement with accused No.1 company and if the complainant would take any action against the directors and authorised signatories of M/s. Vishnurupa Developers Pvt. Ltd. or partners of M/s. SVS Infra Build Pvt. Ltd., the complainant has to face serious consequences. The complainant has also alleged that on 5.11.2011, the complainant came to know through public notice in Tribune that land of M/s. Vishnurupa Developers Pvt. Ltd. of which deal was conducted has already been mortgaged by the accused persons to Gold Developers Pvt. Ltd. (GDPL) and Gold Developers International Pvt. Ltd. (GDIPL) and both of these companies have their offices in New Delhi.

5. The complainant has also alleged that all the proposed accused persons with dishonest intention fraudulently allured the complainant to grab the amount of Rs.2.00 crores (Rupees two crores) and they have in furtherance of their conspiracy cheated the complainant. The FIR No.20/2012 under Sections 420/120B read with Section 34 IPC was registered at P.S. Barakhamba Road, New Delhi on 15.2.2012.

6. Learned counsel for the petitioner urges that after registration of FIR, the investigating agency started pressurizing the petitioner/complainant to settle the matter with the accused persons and withdraw the complaint. The petitioner moved an application u/s 156(3) Cr.P.C. for monitoring and expediting the investigation in the said FIR No.20/2012. Learned Metropolitan Magistrate, New Delhi called the status report. The petitioner placed on record a 'settlement agreement' dated 29.5.2012 to show that M/s. Vishnurupa Developers Pvt. Ltd. obtained approximately Rs.1,23,52,07,364/- from M/s. Experion Developers Pvt. Ltd. (earlier known as M/s. Gold Developers Pvt. Ltd.) against development consideration of 206.37 acres of land, out of which the petitioner was induced to purchase 160 acres. Vide order dated 11.7.2013, after considering the ATR, Learned Metropolitan Magistrate directed to change the Investigating Officer under the close supervision of SHO concerned.

7. Learned counsel for the petitioner also submits that the petitioner was again forced to settle the matter with the accused persons. The petitioner made various representations with the senior officials but to no avail.

8. Counsel for the petitioner also pointed out that the investigating agency issued notice u/s 91 Cr.P.C., calling upon M/s. Experion Developers, earlier known as M/s.

Gold Developers Pvt. Ltd., to furnish details of the transaction with the accused, M/s. Vishnurupa Developers Pvt. Ltd. The said notice was responded vide reply dated 4.4.2013 and 09.9.2013 which shows that when the accused persons entered into deal with the petitioner, the land was already in equitable mortgage with M/s. Experion Developers Pvt. Ltd. (earlier known as Gold Developers Pvt. Ltd.). Learned counsel for the petitioner submits that investigating officer obliged the accused persons by filing the cancellation report on 25.3.2014 and by overlooking the evidence available on record.

9. On the other hand, learned APP for the State submits that there is no written agreement between the complainant/petitioner and the alleged accused persons/company and there was no stipulation of time to materialise any sale deed. Therefore, title of the property in question remained with M/s. Vishnurupa Developers Pvt. Ltd., who later on entered into fresh agreement with M/s. New Hope Developers, which was also not materialised. Since there was no agreement to sell between the complainant and the alleged accused persons, the terms of the agreement could not be verified. He further submits that during course of investigation it was revealed that M/s. Vishnurupa Developers Pvt. Ltd. was ready to return the token money to the complainant and his partner and no cognizable offence is made out. Therefore, final report was filed.

10. I have bestowed my careful consideration to the submissions made by learned counsel for the petitioner and learned APP for the State.

11. Chapter XII of Cr.P.C. deals with the information to the police and their power to investigate. At this juncture, it would be relevant to reproduce relevant provisions of sub-sections (1), (2) and (8) of Section 173 Cr.P.C. which read as under:

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) The names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody u/s 170.

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence u/s 376, 367A, 376B, 376C [section 376D or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any by whom the information relating to the commission of the offence was first given.

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(8) Notwithstanding in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of" sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

12. Sub-section (1) of Section 173 Cr.P.C. envisages that every investigation by the police shall be completed without unnecessary delay. Sub-section (2) of Section 173 Cr.P.C. provides that as soon as such investigation is completed, the officer incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government u/s (2) of Section 173 Cr.P.C., a police report (charge sheet or challan) is filed by the police after the investigation is complete.

13. Sub-section (8) of Section 173 Cr.P.C. provides that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, where charge sheet or challan has been filed by the police under sub-section (2) of Section 173 Cr.P.C., the police can undertake further investigation, but not fresh investigation or re-investigation, in respect of offence under Sub Section (8) of Section 173 Cr.P.C.

14. Section 482 Cr.P.C., however, provides that nothing in Cr.P.C. shall be deemed to limit or affect the inherent power of the High Court to make such power as is necessary to give effect to any order under Cr.P.C. or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

15. A conjoint reading of Section 173 Cr.P.C. and Section 482 Cr.P.C., makes it clear that language of Subsection (8) of Section 173 Cr.P.C. cannot limit or affect the

inherent powers of the High Court to pass an order u/s 482 Cr.P.C. for fresh investigation or re-investigation, if the High Court is satisfied that such further investigation or re-investigation is necessary to secure ends of justice.

16. It is settled law that the investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is the duty of the investigating officer to conduct investigation avoiding any kind of mischief or harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion so as to its genuineness. The Investigating Officer not merely bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth.

17. The Apex Court in [Mithabhai Pashabhai Patel and Others Vs. State of Gujarat](#), held that:

13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in [Ramachandran Vs. R. Udhayakumar and Others](#), opined as under: (SCC p. 415, para 7)

7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.

A distinction, therefore, exists between a reinvestigation and further investigation.

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15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power u/s 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code.

18. On a perusal of the observations made in the aforesaid judgment, it is clear that the investigating agency or the court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of Cr.P.C.

and it would mean that investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But the limitations in sub-section (8) of Section 173 Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court u/s 482 Cr.P.C. for securing the ends of justice.

19. In [State of Bihar and Another Vs. P.P. Sharma, IAS and Another](#), it was observed:

57.....Investigation is a delicate, painstaking and dexterous process. Ethical conduct is absolutely essential for investigative professionalism..... Therefore, before countenancing such allegations of mala fides or bias, it is salutary and an onerous duty and responsibility of the Court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

20. In another case [Nirmal Singh Kahlon Vs. State of Punjab and Others](#), the State police had investigated into the allegations of irregularities in selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge sheet against Nirmal Singh Kahlon. Yet the High Court in a PIL under Article 226 of the Constitution of India passed order on 7.5.2003 directing investigation by CBI into the case as it thought that such investigation by CBI was "not only just and proper but a necessity". Nirmal Singh Kahlon challenged the decision of the High Court before Hon"ble Supreme Court of India contending, inter alia, that sub-section (8) of Section 173 Cr.P.C. did not envisage an investigation by CBI after filing of charge sheet and the court of Magistrate alone has the jurisdiction to issue any further direction for investigation.

21. In view of the aforesaid dictum of the Apex Court that the scheme of investigation, particularly Section 173(8) Cr.P.C. provides for further investigation and/or reinvestigation. Therefore, if the court comes to the conclusion that the investigation has been done in a manner with a object of helping a party, the court may direct for further investigation and ordinarily not for re-investigation.

22. In the instant case, the FIR u/s 420 read with Section 120B IPC was registered on 15.2.2012. On an application u/s 156(3) Cr.P.C. filed on behalf of the petitioner vide order dated 11.7.2013, the Metropolitan Magistrate, New Delhi observed that the investigation has been passive and no sufficient progress has been made despite registration of FIR. The Magistrate directed the ACP concerned to change the Investigating Officer, who do not seem to be proceeding on correct lines and with the expediency the case requires and mark this case to an investigating officer of the rank of Inspector at the same police station. It was also directed that the new investigating officer should take expedient steps as possible and the SHO concerned

will closely supervise the investigation so that there is no designedly defective investigation due to negligence or otherwise. The Metropolitan Magistrate emphasised that if passiveness is seen in the investigation then an adverse action may be recommended against the SHO and the investigating officer. It was also directed that all the efforts be made for completing the investigation within two months.

23. According to the status report filed on behalf of the State, since there is no written agreement between the complainant and the alleged accused person/company and there was time stipulation to materialise any sale deed and title of the property in question remained with the alleged firm M/s. Vishnurupa Developers Pvt. Ltd. which later on entered into fresh agreement with M/s. New Hope Developers which was also not materialised.

24. The law does not require that the agreement must be executed in writing. There are various receipts executed by M/s. Vishnurupa Developers Pvt. Ltd. for the amounts paid by the petitioner and Harish Kumar. The receipt dated 16.6.2011 clearly depicts that the said amount was paid by the complainant (purchaser) towards advance to the seller in respect of land admeasuring 160 acres at the rate of Rs.1.20 crores. Similarly the receipts dated 17.6.2011, 18.6.2011 and 24.6.2011 clearly show that the amounts mentioned in the receipts were paid in respect of the 160 acres of land at Amritsar and the detailed agreement was to be executed within one week. The same fulfils requirement of an agreement. According to the petitioner, the accused persons entered into an agreement to sell with M/s. New Hope Developers on 28.6.2011. The agreement to sell executed on 28.6.2011 between M/s. Vishnurupa Developers Pvt. Ltd. and M/s. New Hope Developers is on record.

25. Counsel for the petitioner has also referred to a public notice published in the newspaper "Tribune" Chandigarh Edn. dated 5.11.2011 issued by Gold Developers Pvt. Ltd. and Gold Developers International Pvt. Ltd. to show that the land in question of M/s. Vishnurupa Developers Pvt. Ltd. was mortgaged in favour of Gold Developers Pvt. Ltd and Gold Developers International Pvt. Ltd.

26. According to the final report submitted by the SHO the land in question was freezed as per the orders of SHO dated 18.7.2012. It is not clear that if the land in question of M/s. Vishnurupa Developers Pvt. Ltd. situated at Amritsar was freezed, as to how M/s. Vishnurupa Developers Pvt. Ltd. managed to sell the part of the same land and what action was taken by the I.O. against the erring officials.

27. In the light of the aforesaid discussion, without doubting the fairness of investigation carried out by the investigating officer, it would be fair and in justice of both the parties and the public that the investigation is done by the Crime Branch of Delhi Police.

28. Accordingly, further investigation of FIR No.12/2012 dated 15.2.2012 registered at P.S. Barakhamba Road, New Delhi shall be carried by an officer not below the rank of Inspector in the crime branch of Delhi Police. The investigation shall be supervised by the officer not below the rank of Deputy Commissioner of Police. Since FIR was registered in 2012, the investigation shall be completed expeditiously.

29. With the aforesaid observations, the petition stands disposed of.